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State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

KIMBERLEY HARRINGTON
Acting Commissioner

May 16, 2017

Ms. Elizabeth Athos, Esq.
Education Law Center
60 Park Place, Suite 300
Newark, NJ 07102

SUBJECT: Complaint Investigation #C2017-5648

Dear Ms. Athos.:

The Office of Special Education Policy and Procedure (OSEPP) has completed its investigation of your written allegation(s) of noncompliance regarding the provision of special education programs and/or services as required under federal and state statute and regulation in the Paterson School District.

Enclosed you will find the final complaint investigation report which details the findings, conclusions and corrective actions for the Paterson School District to follow in order to comply with mandated regulation and statute. The OSEPP will follow up with the district regarding these issues.

Should additional information be required you may reach Maria Desautelle, Complaint Investigator, at (609) 292-7602.

Sincerely,

Dolores Walther, Ph.D., Coordinator of Complaint Investigations
Office of Special Education Policy and Procedure

Enclosure

c: Maria Desautelle, Complaint Investigator



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COMPLAINT INVESTIGATION REPORT

Complaint Number: C2017-5648
Respondent: Paterson School District
County: Passaic County
Investigation Conducted By: Maria B. Desautelle, Complaint Investigator
Office of Special Education Policy and Procedure
(OSEPP)

Procedural History:

This investigation was initiated on March 15, 2017 on behalf of students with disabilities in the Paterson School District. The complaint was filed by the Education Law Center ("ELC"). The complaint alleges that the district failed to provide speech services, occupational therapy and physical therapy ("related services") in accordance with students' IEPs district-wide. The district initially denied all allegations by the complainant, but in interviews provided documentation demonstrating that some students in the district had been missing related services since February 6, 2017 due to the termination of the contract with the vendor, Kid Clan, which was supposed to provide related services for many of the schools in the district through the end of the 2016-2017 school year.

Investigation procedures included a review of the complaint form submitted by the complainant, interviews with district personnel, review of documentation provided by the district and audit of student files through Easy IEP. (See Appendix)

Issue:

Whether the district board of education has implemented the IEPs of students with disabilities with regard to related services for the 2016-2017 school year.¹

¹ The complainant did not provide any specific facts, as required by N.J.A.C. 6A:14-9.2, with regard to preschool students. Accordingly, this complaint investigation is being opened for students ages 5 to 21 in the schools listed in the complaint for which the complainant provided specific facts.

Code References:

N.J.A.C. 6A:14-1.1(h) (General Provisions – General Requirements)

N.J.A.C. 6A:14-4.1(a) (Programs and Instruction - General Requirements)

Findings of Fact:

1. The parties agree that the district stopped providing related services to numerous students on February 6, 2017, the date of termination of the contract with Kid Clan. (The reasons for the termination are outside the scope of this investigation).
2. For purposes of the investigation, the district provided documentation detailing the names of the students and specific related services missed for each student from February 6, 2017 to April 7, 2017.
3. The district is continuing to track what related services students have continued to miss from February 6, 2017 to the full resumption of services.
4. The OSEPP also reviewed the records of random students at the ten schools listed in the complaint from September 15, 2016 to February 6, 2017 and found numerous students were missing related services prior to February 6, 2017 and, in some cases, students had no related services documented in Easy IEP for the entire school year.
5. The OSEPP also determined there appears to be a discrepancy in how related services are logged throughout the district.
6. In some cases, OSEPP could access the section of Easy IEP where services were logged and see services. However, many students did not have services logged in this section, and instead the services were shown by provider. The OSEPP could not access detailed records in Easy IEP for individual students when those services were logged by provider.
7. Because of the apparent discrepancies in logging services in Easy IEP, OSEPP could not accurately determine whether or not students referenced in paragraph #6 as having received no related services, did actually receive services throughout the school year.

Conclusion:

N.J.A.C. 6A:14-4.1(a) requires districts to fully implement the IEPs of students with disabilities. Additionally, N.J.A.C. 6A:14-1.1(h) requires districts to maintain documentation demonstrating compliance with the special education requirements set forth in Chapter 14 (Special Education) of the administrative code. In this case, the district has failed to show compliance with either of the requirements.

The district does not dispute that students who were intended to be served by Kid Clan have not received services from February 6, 2017 to the present. However, based on OSEPP’s review of records, there appear to be students not served by Kid Clan who also did not receive related services during the same time period. Moreover, when spot checking records electronically, OSEPP found numerous students were missing related services prior to February 6, 2017 and, in some cases, students had no related services documented in Easy IEP for the entire school year. It also appears that there is a discrepancy in either how the records are logged in Easy IEP or how the records are saved in Easy IEP, which may be causing a discrepancy between the actual number of related service sessions provided and documentation of their delivery. Nevertheless, the district is required to maintain accurate documentation demonstrating compliance with special education requirements and is not doing so. Therefore, the district is determined noncompliant, and corrective action is necessary.

Corrective Action Plan:

<p>Finding: Noncompliance regarding documentation of related services and implementation of IEPs</p> <p>Element #s 27 and 31: FOR INTERNAL USE ONLY</p>			
<p>CAP Directive Activities</p>	<p>Documentation needed to demonstrate compliance:</p>	<p>Documentation Due Date:</p>	<p>Documentation submitted to:</p>
<p>1. The district will determine the number of occupational therapy (OT), physical therapy (PT) and speech services missed for the 2016-2017 school year for each student in accordance with the student’s IEP.</p> <p>The district will submit a spreadsheet listing each student, the number of OT, PT and speech services that they should have received pursuant to their IEP and the number they actually received.</p> <p>The district must take steps to ensure that Easy IEP documentation is accurate and current so that OSEPP can spot check Easy IEP to determine accuracy of the district’s</p>	<p>Spreadsheet</p>	<p>July 15, 2017</p>	<p>Maria B. Desautelle, Complaint Investigator</p>

documentation. If the district does not have documentation from the therapist providing the session, the district may not count the session as provided.			
2. The district will submit a plan to OSEPP for providing compensatory services for each student, including the modality through which the service is provided. For students whose services will be provided during Extended School Year (ESY) or who the district proposes less than a one-to-one ratio, the district must send a request to amend the IEP without a meeting to the parent/guardian and receive written consent or hold an IEP meeting. The district may start this process immediately and submit documentation of the parent/guardian's consent.	Plan and supporting documentation may be sent to OSEPP or presented at a site visit.	Monthly, beginning July 15, 2017 and continuing until September 15, 2017	Maria B. Desautelle, Complaint Investigator
3. Provide compensatory services and differentiate in Easy IEP compensatory services versus regular IEP services.	Spreadsheet documenting compensatory services and supported by service logs either in Easy IEP or manual logs available for audit by OSEPP.	Monthly, beginning July 15, 2017	Maria B. Desautelle, Complaint Investigator
4. The district will provide training district-wide for related service providers regarding procedures for logging services into Easy IEP and/or a procedural memorandum on logging services.	Training materials and sign-in sheets and/or procedural memorandum and distribution list demonstrating that all related service providers have been trained and/or have received the procedural memorandum.	September 15, 2017	Maria B. Desautelle, Complaint Investigator

Submission and Verification of Corrective Action:

Pursuant to U.S. Department of Education requirements, the Office of Special Education Policy and Procedure (OSEPP) must ensure that any identified noncompliance is corrected as soon as possible, but in no case later than one year from identification. Therefore, the district is expected to correct the noncompliance according to the timelines established in the corrective action plan, but in no case later than one year from the date the education agency was notified of the noncompliance. Failure to complete the corrective actions within the one-year timeline does not relieve the education agency of its responsibility for completion and may result in additional action or sanctions by the OSEPP to ensure completion. These may include the withholding of IDEA funds, until all corrective activities are documented and approved. Once submitted and approved, the OSEPP will be responsible for verifying the implementation of the corrective action plan through document review and/or onsite visit(s).



John Worthington, Director
Office of Special Education Policy and Procedure

5-12-17

Date

APPENDIX

Persons Interviewed:

Title	Date of Interview
Director of Special Services	April 27, 2017
Board Attorney	April 27, 2017

Table of Documents:

Document Title	Date of Document
Complaint	March 15, 2017
District response	March 17, 2017
Spreadsheet provided by district (OT services)	April 27, 2017
Spreadsheet provided by district (PT services)	April 27, 2017
Spreadsheet provided by district (speech services)	April 27, 2017
Paterson Public Schools – Department of Special Services Assignments 2016-2017	April 27, 2017